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10/574,486	07/16/2007	Yasuchika Takei	TAKEI 54	9144

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BROWDY AND NEIMARK, P.L.L.C.  
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SUITE 300  
WASHINGTON, DC 20001-5303

EXAMINER
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GUTMAN, HILARY L

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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JAN 06 2009

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624 Ninth Street, NW  
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Washington, DC 20001-5303

December 29, 2008

In re Application of:  
Yasuchika TAKEI et al.  
Application No.: 10/574,486  
Filed: July 16, 2007  
Attorney Docket No. TAKEI – 54

**DECISION ON PETITION  
UNDER 37 CFR 1.181**

This is in response to the petition filed on September 3, 2008 under 37 CFR 1.181 requesting the withdrawal of the finality of the Office Action mailed August 21, 2008 as being improper.

The petition is **GRANTED**.

Applicant alleges that the final rejection mailed August 21, 2008 is improper because claims 2 and 3 were not rejected on prior art, in the previous Office action mailed November 29, 2007 and instant claims 2 and 3 were merely amended to incorporate the limitations of cancelled claim 1 and eliminate the negative recitations identified by the examiner.

MPEP 706.07(a) sets forth that the second or any subsequent action on the merits shall be made final except where the examiner introduces a new ground of rejection that is neither necessitated by applicants' amendment nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

A review of the record reveals that claims 2 and 3 were rejected under 35 USC 112, 2<sup>nd</sup> paragraph, for failing to further limit the base claim by reciting negative limitations in a first Office action on the merits mailed November 29, 2007. Furthermore, the examiner indicated that claims 2 and 3 would be allowable if rewritten to overcome the rejections under 35 USC 112, 2<sup>nd</sup> paragraph and to include all the limitations of the base claim. In response to this Office action, applicant amended claims 2 and 3 to include the subject matter of original claim 1 and attempted to eliminate the negative limitations to overcome the 35 USC 112, 2<sup>nd</sup> paragraph rejections.

In view of the fact that amended claims 2 and 3 were not rejected on any prior art in the first Office action on the merits, it is agreed that the new grounds of rejections were not necessitated by applicants' amendment.

The finality of the Office action mailed September 3, 2008, but not the action itself, is hereby withdrawn. The Office action of September 3, 2008 is now considered to be non-final and the shortened statutory period for response continues to run THREE (3) MONTHS from the date of mailing of the Office action.

SUMMARY: The petition is GRANTED.

Telephone inquiries should be directed to D. Glenn Dayoan, Supervisory Patent Examiner, at (571) 272-6659.

A handwritten signature in cursive script, appearing to read "D. J. Bagnell", written over a horizontal line.

David J. Bagnell, Acting Director  
Patent Technology Center 3600  
(571) 272-5250

DGD/SM: 12/29/08

Handwritten initials "SM" in a stylized, cursive font.